

72025

July 26, 2000



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Mr. Robert Johnson
Acting District Director (HFR-PA100)
Food and Drug Administration
San Francisco District Office
1431 Harbor Bay Parkway
Alameda, CA 94502-7070

Dear Mr. Johnson:

Stanislaus Food Products, Inc. is writing to bring to your attention the violative, illegal promotion of Old California™ processed tomato products as “fresh.” This promotion is improper under 21 C.F.R. § 101.95 and FDA regulatory policy regarding use of the term “fresh.” Copies of Old California’s sales brochure directed to the foodservice industry (which constitutes “labeling” within FDA’s jurisdiction) and product labels are enclosed. The sales brochure identifies Old California as located in Firebaugh, California, within the jurisdiction of your office. As the brochure also identifies Old California’s corporate parent as a Neil Jones Company, in Vancouver, Washington, we are sending a copy of this letter to FDA’s Seattle District Office.

The Old California brochure violates FDA requirements and policies in a number of ways. It makes direct, unqualified reference to the heat processed Old California products as “fresh,” e.g., “fresh Old California products.” This statement is in clear violation of 21 C.F.R. § 101.95(a), which prohibits use of the term “fresh” to refer to a thermally processed food.

The overall theme of the brochure -- “fresh from the field” and the accompanying use of the “fresh” tomato logo -- is objectionable because it “suggests or implies that the food is unprocessed,” in violation of § 101.95(a). In this regard, “fresh from the field” is indistinguishable from similar claims that FDA has found to be objectionable for heat processed food products, such as “Fresh Italian” bottled spaghetti sauce, “Fresh Cut” canned vegetables, and “Fresh Choice” pasteurized orange juice. Similarly, statements such as “freshness you can see,” “fresh, ripe San Joaquin Valley tomatoes,” “we’ve taken everything we know about freshness and packaged it for your convenience,” “freshness with convenience,” “freshness is assured,” “freshest tomatoes,” and “freshest tomato products” are objectionable, as they also suggest that Old California’s processed tomato products are, in fact, not thermally processed.

Stanislaus
Food
Products

00N-1351

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Modesto, CA 95354
(209) 522-7201
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Letter to Mr. Robert Johnson
July 26, 2000
Page 2

The implication that the products are “fresh” is reinforced by four graphics of the river, sky, and ocean and accompanying references to “fresh.” According to our legal counsel, the courts have recognized that in determining whether food labeling is false or misleading, labeling should be viewed as a whole. United States v. An Article of Food ... Lollipops, 292 F. Supp. 839 (S.D.N.Y. 1968).

“Old California delivers the finest and freshest ingredients...” is objectionable under § 101.95 for the same reasons stated above. Moreover, it is false on its face without reference to § 101.95, as the “freshest” ingredient is obviously a fresh tomato, not a processed tomato product.

There is no “safe harbor” of any relevance under the preamble to FDA’s final rule on “fresh.” FDA sanctioned the use of the term “fresh packed” for pickles packed in accordance with applicable USDA regulations. 58 Fed. Reg. 2302, 2405, ¶ 330 (January 6, 1993). That very limited exception to FDA’s general prohibition against use of the term “fresh” for processed products is obviously of no relevance here. FDA also stated in that rulemaking preamble that terms such as “freshness seal,” “guaranteed fresh,” and “vacuum packed to preserve freshness” are not prohibited “when they relate only to the function of the package and do not imply or suggest that the food itself is unprocessed.” 58 Fed. Reg. at 2407, ¶ 336. Although some of Old California’s “fresh” claims are made in connection with their packaging (e.g., “pouch pack offers freshness”), it is evident from viewing the brochure as a whole that these “fresh” claims go well beyond relating only to the function of the packaging.

In the “fresh” rulemaking preamble, FDA recognized that it would consider claims about the use of “fresh” ingredients in processed products on a case-by-case basis. 58 Fed. Reg. at 2405, ¶ 332. Pursuant to that policy, FDA has sanctioned voluntary use of the phrase “packed from fresh tomatoes” for processed tomato products when factually supportable. While one Old California statement about the use of “fresh” starting ingredients (“our processing is done with freshly picked, specially selected fruit...”) is not by itself objectionable, the informal “packed from fresh tomatoes” exception does not in any way sanction the host of other “fresh” statements in Old California’s brochure.

In the recent past, FDA has taken action to stop the improper use of the term “fresh.” In 1991, FDA brought an end to the improper “fresh” claims on the labels of Ragu Foods’ “Fresh Italian” bottled spaghetti sauce and Procter & Gamble’s Citrus Hill “Fresh Choice” pasteurized orange juice. Similarly, in 1997, FDA took action against Del Monte’s “Fresh Cut” canned vegetable products. Just as FDA initiated actions with respect to those products, FDA should take

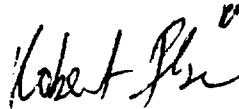
Letter to Mr. Robert Johnson
July 26, 2000
Page 3

appropriate action with respect to Old California's "fresh" processed tomato products. Prompt regulatory action is needed, so that purchasers are not misled and honest competitors are not harmed.

Stanislaus produces thermally processed tomato-based products for the foodservice industry, such as tomato sauce, pasta sauce, and pizza sauce, in direct competition with Old California's products. Unlike Old California, Stanislaus labels and promotes its products in full compliance with all applicable FDA requirements and policies. Companies like Stanislaus should not be at a competitive disadvantage because firms like Old California do not obey the law.

Stanislaus appreciates your attention to this important matter.

Sincerely yours,



Robert Ilse
President

Enclosures:

Old California brochure and labels
cc: Mr. Charles Breen (with enclosures)
District Director, Seattle District Office
Food and Drug Administration
P.O. Box 3012
Bothell, WA 98041-3012

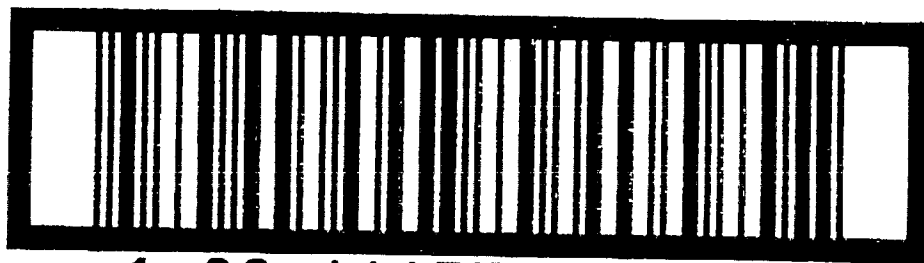
Mr. John B. Foret (with enclosures)
Center for Food Safety and Applied Nutrition
Food and Drug Administration
HFS-156, Room 1848, Federal Building 8
200 C Street, S.W.
Washington, D.C. 20204

NET WEIGHT 38 LBS. 4 OZ.
NET METRIC WT. 17.35 KG
ITEM NO. 44437-14854

6 POUCHES
6/100 FLUID OZ.
(2.84 LITERS)

old california

peeled ground pear tomatoes
in heavy puree



1 00 44437 14854 3

PACKED BY

 **TOMATEK**®

FIREBAUGH, CA 93622-0008

SAVE \$2.00 PER CASE

WNI/Old California™ • P.O. Box 23188 • Portland, Oregon 97281-3188

8. This is an operator coupon only.
Distributors are not eligible
for this program.

[illegible]



Receive a \$2.00 refund for every case of Old California™ products purchased between November 29, 1999 and March 29, 2000. (Up to \$300.00 per customer maximum.) Simply complete this form and attach a copy of your distributor invoice(s) from 11/29/99-3/29/00. Invoices should be received by April 12, 2000.

SAVE \$2.00 PER CASE

FOOD SERVICE OPERATOR REFUND

RECEIVED

old california™

ANOTHER **New Jones** COMPANY

OLD CALIFORNIA™ QUALITY PRODUCTS

Chopped Tomatoes

Chopped Tomatoes in Puree

Ground Tomatoes

Ground Unpeeled Tomatoes in Heavy Puree

Ground Peeled Tomatoes in Heavy Puree

Crushed Tomatoes/Pizza Sauce

Extra-Heavy Concentrated Crushed Tomatoes

Super-Heavy Concentrated Crushed Tomatoes

Super-Heavy Pizza Sauce With Basil

Fully Prepared Pizza Sauce

Tomato Paste

26% Tomato Paste

Tomato Puree

Fancy 1.06 Tomato Puree

Tomato Catsup

Fancy 33% Tomato Cat

Tomato Sauce/ Pasta Sauce

Fancy Tomato Sauce

Fancy Chili Sauce

Premium Pasta Sauce

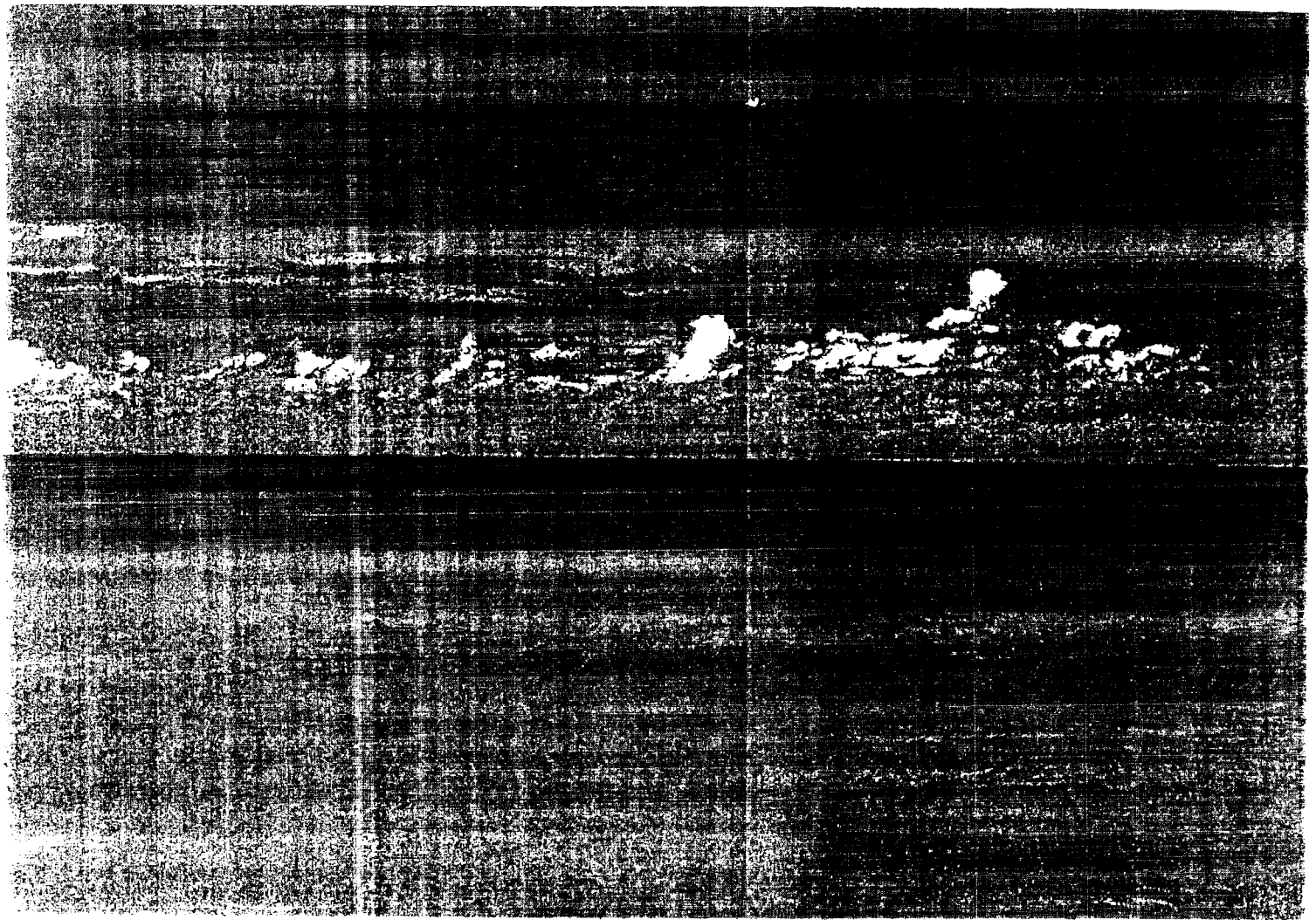


Old California

Firebaugh, California



Corporate Offices: P.O. Box 30, Vancouver, Washington 98660
Toll Free 800.543.4356 Phone 360.696.4356 Fax 360.696.3411 www.oldcaliforniatomatoes.com



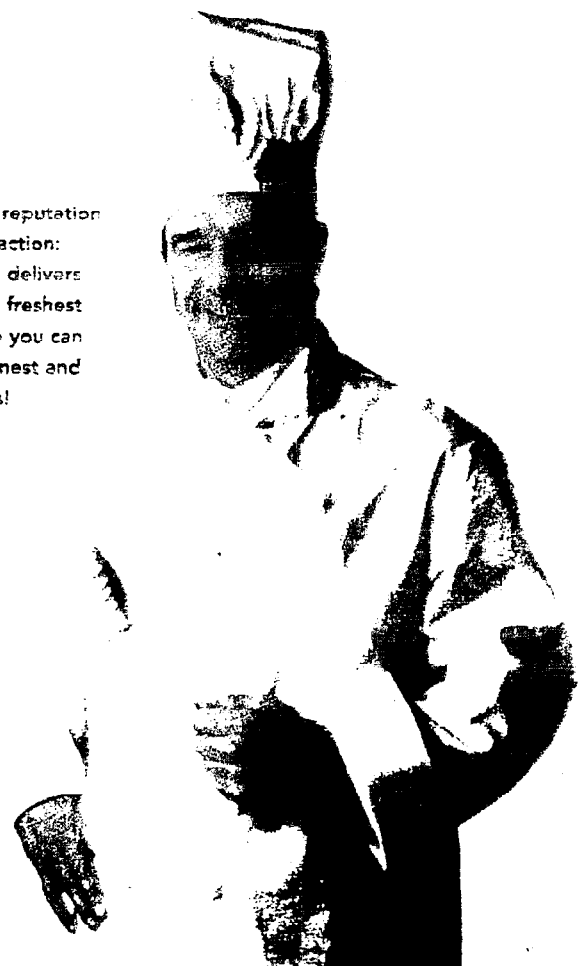
product offering, to simplicity of ordering, to on time delivery, you can count on *Old California* to provide the quality you want—when you want it.

To learn more, call us or visit our website. You'll find out exactly what it takes to be fresh from the field... it takes *Old California*.

**OLD CALIFORNIA HAS WHAT IT TAKES
TO BE YOUR SUPPLIER:**

Fresh from the field taste
Easier handling and dispensing
More efficient storage and shipping
Exceptional service and support

We stake our reputation
on your satisfaction:
Old California delivers
the finest and freshest
ingredients so you can
prepare the finest and
freshest meals!



...together they grow the finest,

freshest tomatoes

on earth

fresh from the field

it takes it takes time to become Old California

IT TAKES OLD CALIFORNIA TO BRING SERVICE
AND CUSTOMER SUPPORT TO A WHOLE NEW LEVEL.



Old California can custom blend sauces to your exact specifications. Quality consistency is guaranteed. Freshness is assured.



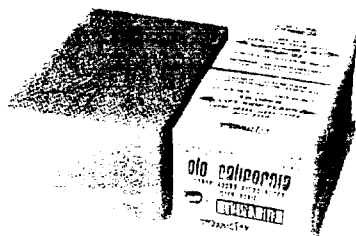
Old California products save space and freight expense... and we get them to you when you need them.

Even a quality product can miss the mark if it's not backed up by great service. That's why we're committed to being the best supplier of tomato products in the business.

Old California has what it takes to create a program that's just the way you want it. We can custom blend your special sauce; custom label your cases; and we've established a nationwide broker and distribution network to make sure the freshest tomato products are always available.

We know that you depend on us to deliver the finest and freshest ingredients. From a full

WE'VE TAKEN EVERYTHING WE KNOW ABOUT FRESHNESS AND PACKAGED IT FOR YOUR CONVENIENCE.



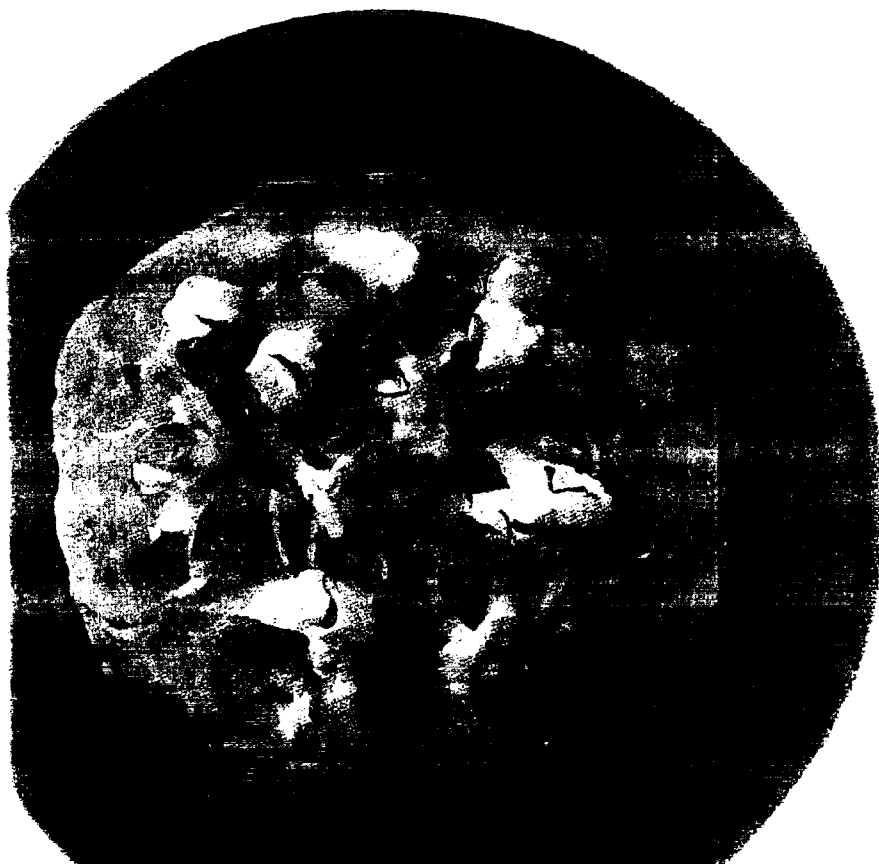
Each Old California case uses .37 cubic feet of space, contains 6 pouches, and weighs about 41lbs net*. A traditional case, based on a similar volume of product, consumes 1.1 cubic feet: a difference of 20%! That's savings you can count on right away!

Old California's pouch pack offers freshness with convenience. It's safe and easy to open. Dispensing is as easy as pouring. Disposal of the environmentally friendly pouch is simple and space-saving.

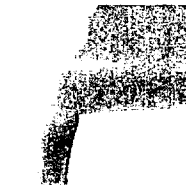
When it comes to storage, the compact *Old California* pouch pack uses far less area. In fact, an *Old California* case saves 20% over other cases. Pouch pack cases weigh less, too — all of which contributes to handling and freight savings — and better, more efficient warehousing.

Best of all, our full product line means you'll always have what it takes to offer the freshest ingredients to your customers.

When you serve fresh *Old California* products, you know your customers will be back for more!



Clip, zip, pour.
Dispensing
Old California's
pouch is simple,
safe, and helps
eliminate waste.



Case cube: 0.87 feet
Case pack: 6 pouches
Pallet pattern: 10 tie x 6 high

Chopped Tomatoes in Purée
• UPC - 44437-14554
• Product Code - 14554/TCJH
• Net Weight (Pouch) - 102oz
• Net Weight (Case) - 38.25lb
• Gross Case Weight - 40.375lb

Ground Unsliced Tomatoes in Heavy Purée
• UPC - 44437-14754
• Product Code - 14754/TGUH
• Net Weight (Pouch) - 102oz
• Net Weight (Case) - 38.25lb
• Gross Case Weight - 40.375lb

Ground Sliced Tomatoes in Heavy Purée
• UPC - 44437-14854
• Product Code - 14854/TGPH
• Net Weight (Pouch) - 102oz
• Net Weight (Case) - 38.25lb
• Gross Case Weight - 40.375lb

Extra Heavy Concentrated Chopped Tomatoes
• UPC - 44437-34104
• Product Code - 34104/CTH
• Net Weight (Pouch) - 106oz
• Net Weight (Case) - 39.75lb
• Gross Case Weight - 41.875lb

Super Heavy Concentrated Chopped Tomatoes
• UPC - 44437-34154
• Product Code - 34154/CTHH
• Net Weight (Pouch) - 107oz
• Net Weight (Case) - 40.125lb
• Gross Case Weight - 42.25lb

Super Heavy Pizza Sauce w/Basil
• UPC - 44437-34454
• Product Code - 34454/PSBH
• Net Weight (Pouch) - 107oz
• Net Weight (Case) - 40.125lb
• Gross Case Weight - 42.25lb

Triple Prepared Pizza Sauce
• UPC - 44437-34474
• Product Code - 34474/PSOS
• Net Weight (Pouch) - 107oz
• Net Weight (Case) - 40.125lb
• Gross Case Weight - 42.25lb

25% Tomato Paste
• UPC - 44437-44254
• Product Code - 44254/PT6
• Net Weight (Pouch) - 111oz
• Net Weight (Case) - 41.625lb
• Gross Case Weight - 43.75lb

Fancy 1.36 Tomato Purée
• UPC - 44437-54254
• Product Code - 54254/HTA
• Net Weight (Pouch) - 106oz
• Net Weight (Case) - 39.75lb
• Gross Case Weight - 41.875lb

Fancy Tomato Sauce
• UPC - 44437-74104
• Product Code - 74104/TS
• Net Weight (Pouch) - 106oz
• Net Weight (Case) - 39.75lb
• Gross Case Weight - 41.875lb

Fancy Chili Sauce
• UPC - 44437-74714
• Product Code - 74714/CS
• Net Weight (Pouch) - 117oz
• Net Weight (Case) - 44lb
• Gross Case Weight - 46.125lb

Premium Pasta Sauce
• UPC - 44437-74914
• Product Code - 74914/SSPP
• Net Weight (Pouch) - 106oz
• Net Weight (Case) - 39.75lb
• Gross Case Weight - 41.875lb

Fancy Salsas
• UPC - 44437-64104
• Product Code - 64104/HKA
• Net Weight (Pouch) - 117oz
• Net Weight (Case) - 43.875lb
• Gross Case Weight - 46lb



it takes the sky

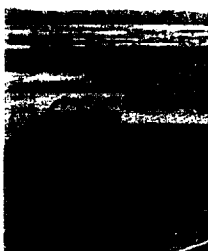
presenter of warmth and wind
and fresh seasons of growth

...this too, is what it takes...

WE TAKE THE BEST TOMATOES IN THE WORLD, AND CAPTURE THEIR FLAVOR WITH A UNIQUE PROCESS... FRESH FROM THE FIELD.

The cool, clear water... the perfect warmth of the sun... the rich soil... In no other place in the world do the elements unite to create such tomatoes. Rich in texture and ripe with color, California tomatoes are renowned for exceptional flavor, enhancing dishes from the very best of kitchens.

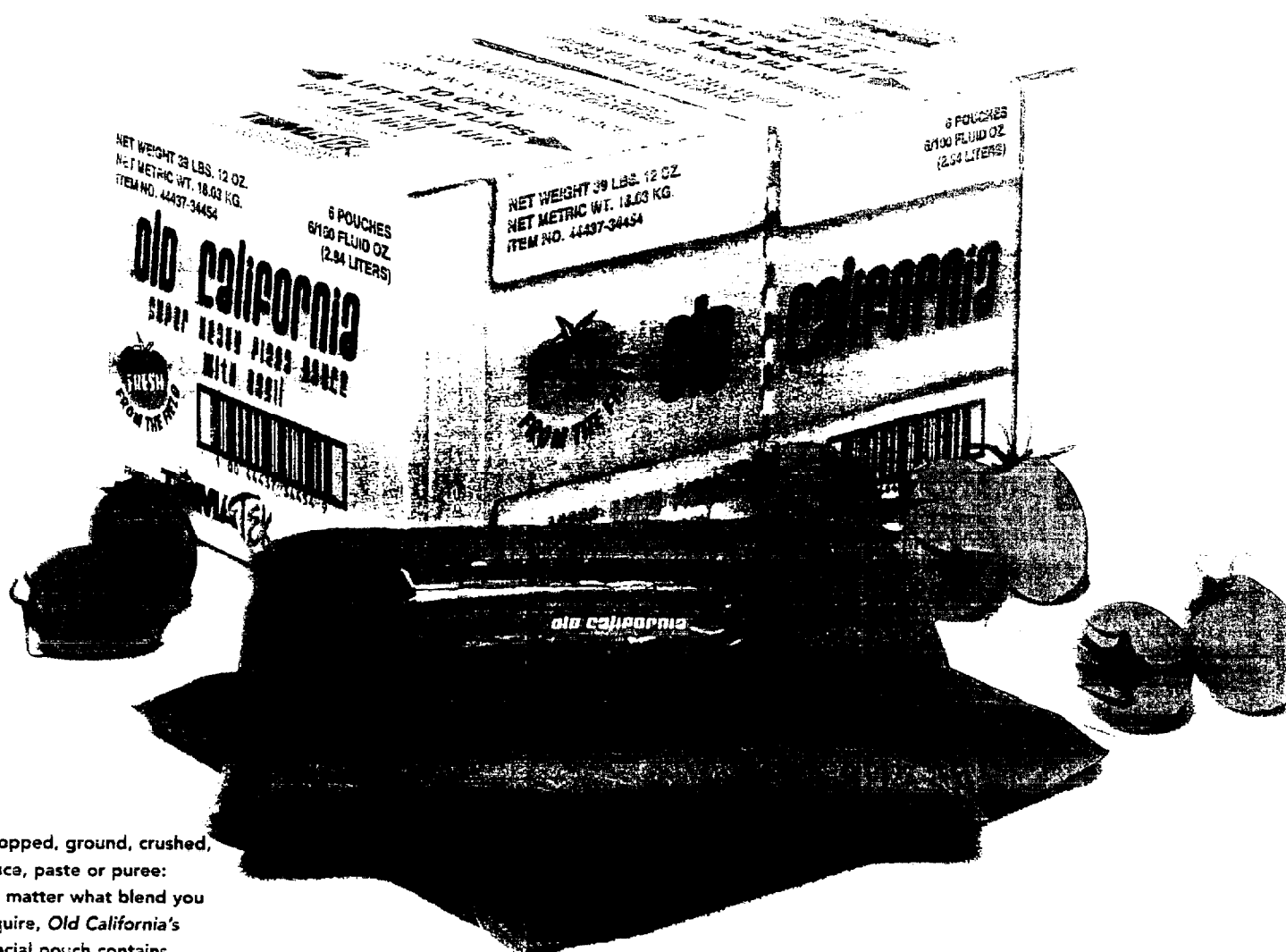
Now, *Old California* has captured the very essence of fresh, ripe San Joaquin Valley tomatoes in a clear plastic pouch pack that is easier to handle, dispense and shelve.



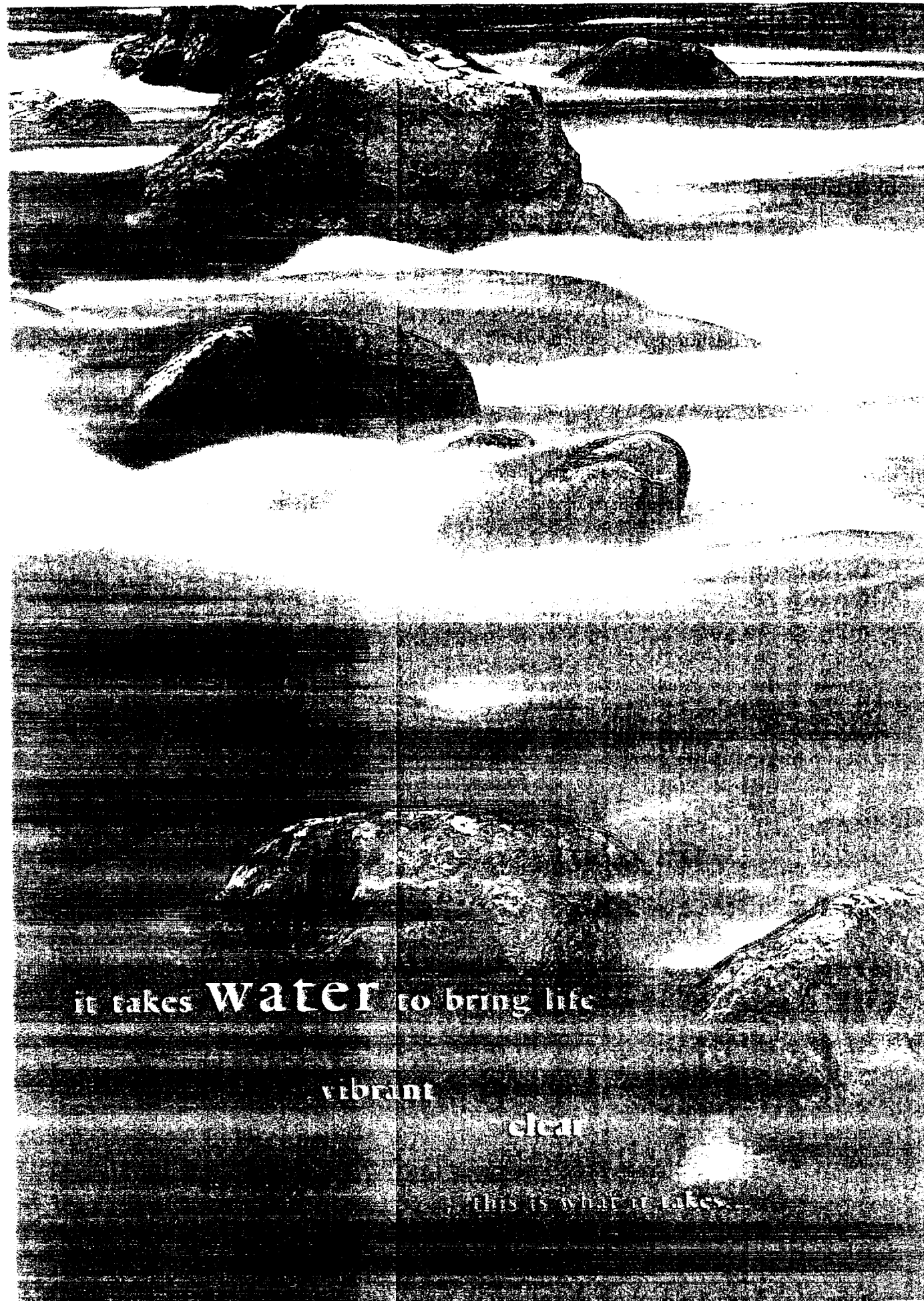
California's
San Joaquin Valley

Our processing is done with freshly picked, specially selected fruit, so you're guaranteed a product that has better color, taste and texture retention. No longer do you have to use ingredients that have been reprocessed — often reheated once or twice before you ever open the case.

Old California tomato products in the convenient pouch pack are just the way you and your customers want them...
Fresh From the Field.



Chopped, ground, crushed, sauce, paste or puree: No matter what blend you require, *Old California's* special pouch contains freshness you can see.



it takes **Water** to bring life

vibrant

clear

THIS IS WHAT IT TAKES



THIS IS WHAT IT TAKES TO BE
FRESH FROM THE FIELD

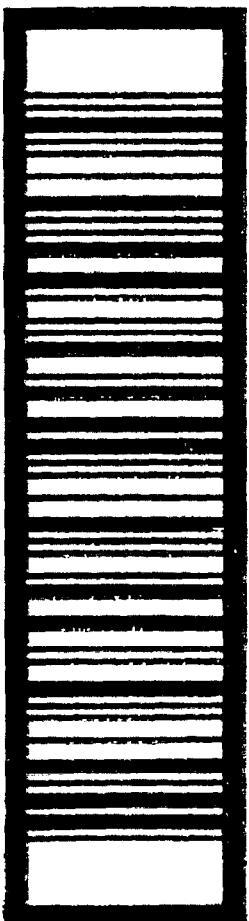
old california 

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6 POUCHES
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Old California

peeled green pear tomatoes
in heavy puree



1 00 44437 14854 3

PACKED BY **TOMESK**®

FIREBAUGH, CA 93622-0008